

Appeal Decision

Site visit undertaken on 4 November 2020

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision Date: 8th January 2021

Appeal Ref: APP/U5360/W/20/3251373

19 Urswick Road, Hackney, London E9 6EG

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by M Lipschutz against the decision of the London Borough of Hackney.
 - The application, ref. 2020/0126, dated 13 January 2020, was refused by notice dated 16 March 2020.
 - The development proposed is the enlargement of basement, provision of lightwells and covered courtyard to south elevation and elevational alterations to facilitate conversion of the building into 4 self-contained residential units (use class C3) comprising 3 x 2 bed, and 1 x studio.
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Decision

1. The appeal is allowed and planning permission is granted for the enlargement of basement, provision of lightwells and covered courtyard to south elevation and elevational alterations to facilitate conversion of the building into 4 self-contained residential units (use class C3) comprising 3 x 2 bed, and 1 x studio; at 19 Urswick Road, Hackney, London E9 6EG in accordance with the terms of the application, Ref: 2020/0126, dated 13 January 2020 subject to the conditions attached as a schedule to this Letter.

Preliminary Matters

2. The Reasons for Refusal in the Council's Decision Notice cite Policies 24 and 25 of the Hackney Local Development Framework Core Strategy (CS), and policies DM1, DM2 and DM28 of the Hackney Development Management Local Plan (DMLP). During the appeal process, the Hackney Local Plan 2033 (LP) was adopted by the Council on 22 July 2020, superseding the policies of the CS and DMLP. Both parties were given the opportunity to comment on this change in policy position.¹ I have therefore made my decision on this basis and have only referred to the adopted policies of the LP in this decision.

¹ Email from Planning Inspectorate to both parties sent 30/11/2020

Background and Main issues

3. According to the appeal documents, a planning permission² was granted for 4 self-contained apartments at the appeal site, which was implemented, however the development was not constructed in accordance with the approved plans. A planning application to regularise this diversion from the approved plans was then refused³, and then a further planning application⁴ was made which sought to alter the scheme and address concerns from the Council. This application was refused and the proposed plans⁵ from this refusal form the basis of the plans that are to be assessed in this appeal. These 'proposed plans' differ from the 'as built' plans. As a result, some elements of the development proposed are retrospective.
4. On this basis, the main issues are the effect of the proposed development upon:
 - The living conditions of the occupants of the basement flat, with particular regard to access to daylight and outlook; and
 - The character and appearance of the building and the locality, with particular regard to the Clapton Square Conservation Area (CA).

Reasons

Living conditions, with regard to outlook and access to daylight

5. The main contention with regards to living conditions involves the level of outlook and access to daylight to the bedroom of the basement apartment which is served solely by a lightwell along St John's Church Road. The Council in the Planning officer's report state that *'the proposal as in the previously refused scheme is still considered to provide a substandard level of accommodation in terms of natural light provision and outlook.'* Policy LP2 of the LP seeks that new development should not result in material deterioration of sunlight and daylight. The accompanying text to the Policy recommends that new development submit a daylight and sunlight assessment which follows the methodology from the Building Research Establishment (BRE) publication *'Site layout planning for daylight and sunlight'*.
6. The applicant has submitted a daylight & sunlight report⁶ which is based on the BRE guidance. The BRE guidance is not itself policy, and acknowledges that the criterion and guidance are to be applied flexibly and to help rather than constrain design. The numerical guidelines and technical advice in the BRE publication are purely advisory and should be considered in the context of other site layout constraints.

² Hackney Council Planning Ref: 2015/2923

³ Hackney Council Planning Ref: 2019/4013

⁴ Hackney Council Planning Ref: 2020/0126

⁵ As Proposed Floor Plans, Dwg No. UR.19.PR.201; As Built & Proposed Front and Rear Elevations, Dwg No.UR.19.AB & PR.102; As Built & Proposed Side Elevations, Dwg No.UR.19.AB & PR.103

⁶ Analysis of site layout and daylight and sunlight, by Terence A. Rook, Swinton Jones Consulting Engineers, Dated January 2020.

7. The BRE guidance details the Average Daylight Factor (ADF) which is a measure of reasonable assumptions to the interior daylighting of a room which can be used to give sufficient understanding of the likely quality of light. The ADF is expressed as a ratio percentage where for bedrooms they should achieve a percentage of 1%, whereas kitchens should achieve 2% and living rooms 1.5%.
8. The submitted daylight and sunlight report shows that for the basement level under the proposed plans, the lightwell would achieve 1.01%, which would just be above the minimum as recommended by the guidelines. Whilst it is not ideal to be gaining light solely from a lightwell I am persuaded that the proposal would achieve a recommended standard for access to and quality of light.
9. The other component of this matter relating to living conditions is with regard to outlook. The Hackney Residential Extensions and Alterations Supplementary Planning Document (SPD) shows that lightwells should be a minimum distance of 1 metre from window pane to retaining wall, as well as achieving a 30 degree sight line from the centre of a window to over any obstruction. As shown in the appeal documents, this is also achieved.
10. Consequently, in conclusion of this matter, the proposal would result in an acceptable level of daylight, and outlook which would provide satisfactory living conditions for future occupants. As such, the proposed scheme would be made in accordance with LP Policy LP2 as described previously.

Character and Appearance, including the Clapton Square CA

11. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in respect of development affecting conservation areas, states that special attention shall be paid to the desirability of preserving or enhancing the character and/or appearance of the area.
12. The CA's significance is highlighted in the Clapton Square CA Appraisal 2008, where relevant components of the significance in relation to the appeal site relate to the development of Georgian residential streets leading to St. Johns Church and grounds, creating a village-like experience. The majority of dwellings along St John's Church Road and Urswick Road (which includes the appeal site) are designated in the CA Appraisal as buildings of townscape merit which along with mature trees at the end of St Johns Church Road which create the qualities of local character and local distinctiveness.
13. The dwellings themselves have many of the same design elements, with most being two bays wide, and three storeys tall with parapet and stone dressings around fenestration and characteristic arched window heads at the third storey. The use of traditional materials such as timber, brick and slate along with the similar designs reinforce a uniformity and authenticity which creates a formal picturesque townscape along with vegetated front gardens and street trees give a spacious, leafy and distinctive character.
14. The appeal site displays a number of positive qualities of significance to the CA, being a high quality terraced building which is noted as a building of Townscape Merit and a positive element which contributes to the character and appearance of the area.

15. In undertaking development to buildings within CAs, Policy LP1 of the LP seeks that design responds to the local character and context, including the urban grain; and also preserves and enhances the significance of heritage assets, along with Policy LP3 which seeks to preserve the significance of the historic environment. I note the Council's comments with regards to the wall fronting St John's Church Road, and that there is currently an enforcement investigation with regards to this which relates to previous applications⁷. It is not made clear in the application that this wall is part of the considerations for this current application and that the proposed plans where approval is sought do not indicate any changes to this wall from the previous approvals. I am therefore not convinced that this element is part of the planning application applied for and that the approval of this appeal would not prejudice any enforcement action which is being undertaken in relation to another planning decision. As such this element of this matter will not be considered further.
16. The application form states that the proposed windows would be of uPVC construction. I note discussion with regards to previous applications and whether timber or uPVC were approved and resultant enforcement discussions; however the approval of the material for the windows is clearly a relevant consideration in this case. I note that there is currently uPVC windows in situ on the property. The appearance and constructional techniques of the windows is noticeably different to traditional timber windows. The frames and glazing bars are significantly thicker in section to support the widely positioned double panes, and contain a large gap with silver spacer strip between the glazing which accentuates the reflectiveness of these uPVC units against the more matt and thin, uneven finish and appearance of a traditionally glazed window. Typically, uPVC windows maintain a perfect uniformed and manufactured finish that lacks the finesse and craftsmanship of a traditionally constructed timber window which ages over time. Given uPVC windows are already in situ, their poor appearance is readily apparent.
17. Despite this, the appropriateness of a window is not solely related to the visual appearance, but the authenticity of building materials and local vernacular and how this relates to the heritage values of this particular building, the buildings surrounding, as well as the character and appearance of the broader CA. In this particular location the appeal site is experienced amongst a group of historic buildings and part of the wider terrace at this prominent location along Urswick Road and St John's Church Road where the built form and historic materials, layout and design reinforce the local identity and are positive contributions to the character and appearance of the CA. The use of non-traditional products distracts and is a discordant addition in an area which provides a positive contribution and experience within the CA.
18. I acknowledge comments in the applicant's Statement of Case that there are examples of uPVC windows in the surrounding area, however no details have been presented as to the circumstances of these installations. Whilst this may be the case, these uPVC installations do not reflect a key characteristic

⁷ Council ref No. 2019/0267/ENF

of the conservation area or contribute to its local distinctiveness. On this basis, whilst the use of uPVC windows are deemed to be unacceptable when considered against Policies LP1 and LP3 of the LP, given that this is the only matter that is unresolved; rather than dismissing the appeal on this basis, a condition would allow the matter to be dealt with by approval by the Council.

19. In conclusion on this matter, with materials subject to approval in mind, and taken as a whole; the proposed development would cause neutral harm to the architectural authenticity and integrity of the existing building and to the character and appearance of the CA. Consequently, the proposal would be compliant with to the LP Policies LP1 and LP3 as described previously. The proposal would also be compliant to London Plan 2016 policies 7.4 (local character); 7.6 (Architecture); and 7.8 (Heritage Assets and Archaeology).

Conclusions and conditions

20. I conclude that with regard to the proposal to enlarge the basement, the provision of lightwells and covered courtyard to south elevation and elevational alterations to facilitate conversion of the building into 4 self-contained residential units (use class C3) comprising 3 x 2 bed, and 1 x studio is generally appropriate and would be compliant with the development plan. For these reasons, the appeal should be allowed and planning permission granted, subject to the conditions as detailed below.
21. I have had regard to the context of the Framework which advises that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Council have provided a suggested condition which seeks that 'the following modifications to the scheme are submitted for approval to the council.' However, the condition does not state what specific modifications are required to be submitted for approval. This condition would not be precise and would not meet the tests of conditions under the National Planning Practice Guidance (NPPG).
22. Condition 1 which specifies a time limit to commence the development and Condition 2 which seeks the scheme to be constructed in accordance with approved plans is a standard condition which is required for the avoidance of doubt. Condition 3 seeks that materials for windows are to be approved with a time limit for the submission of the details and a time limit for the installation of an appropriate window⁸. This is considered to meet the tests for conditions as specified in the NPPG, and that the scheme would not be appropriate without this condition.

J Somers

INSPECTOR

⁸ The condition was approved by the applicant via email to the Planning Inspectorate dated 09/12/2020

Schedule of Conditions

1. The development hereby permitted shall begin not later than [3] years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - As Proposed Floor Plans, Dwg No. UR.19.PR.201
 - As Bult & Proposed Front and Rear Elevations, Dwg No.UR.19.AB & PR.102
 - As Bult & Proposed Side Elevations, Dwg No.UR.19.AB & PR.103
3. Notwithstanding the approved plans, within two months of the date of this decision letter, details/samples of the materials to be used in the construction of the external windows of the development hereby permitted shall be submitted to the local planning authority for their approval. The development shall be carried out in accordance with the approved details / samples within 3 months of the approval date.

Reason: The approval of window details is required in order to ensure authenticity to the historic environment and be congruous to the character and appearance of the Conservation Area and to the building of Local Townscape Merit